IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 601 OF 2001

Vinayak Govind Deval ..Appellant

versus

The Collector, Sangli,

District Sangli & Ors. ..Respondents

Mr. V. D. Patil for the Appellant.

Mr. S. N. Gawade, A.G.P. for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 25TH FEBRUARY,2005

ORAL ORDER :

1. Heard counsel for the Appellant and AGP for the Respondents - State.

2. This appeal is filed by the original claimant being dissatisfied by the order of the Reference Court under the Land Acquisition Act, dismissing his reference application by judgment dated 29.4.1999.

3. Appellant was the owner of Gut No. 497 and Gut No.510 within the limits of Village Mhaisal and

it was from these land that area admeasuring 90 R and 38 R along with 66 various types of trees and one residential house admeasuring 134 sq. meters was acquired by the Government for Koyana Lift Irrigation Project. Notification under Section 4 appears to be of 4.1.1990 and by Award dated 24.4.1992 the claimant was awarded Rs.3,28,487/- and therefore he filed Reference under Section 18 of the said Act. The claim for enhancement to the extent of Rs.80,000/- per acre, came to be rejected by the lower court because the claim was based upon the valuation made by the Deputy Collector of Stamps. The sale deed of the claimant in respect of Gut No.319 and 838, total area admeausring 6 Hectares was Rs.2,60,100/-, but Deputy Collector, Stamps, exercising powers under the Bombay Stamp Act found that this was not the real price and therefore for the purpose of stamp duty he fixed price at Rs.5,34,100/- i.e. Rs.35,600/- per acre. Claimant therefore contended that he was entitled to this price fixed by the Collector. Lower court rightly rejected this contention on the basis of the judgment of the Supreme Court reported in (1994) 4 SCC 595 Jiwaji Naonathan vs. Revenue Divisional Collector, wherein it was observed to the effect that the basic valuation register prepared and maintained for the purpose of collecting Stamp duty has no statutory base or force and it cannot form a

foundation to determine the market value mentioned thereunder in instrument brought for registration. Secondly the court also relied upon the Index Registers of Sale transactions that took place between 1984 to 1990 on the ground that only in case of sale merely certified copy was not sufficient unless the vendor or vendee were examined. It appears that even the claimant has not even produced certified copies of the sale deed but remain contented by producing certified copies of Index Register. The reasons given by the trial court for rejecting that evidence cannot be faulted with because claimant did not make available to the Reference Court any material regarding quality of the land which was the subject matter of the aforesaid sales, their proximity to the acquired land and the advantages which those lands had, had it compared to the acquired land. In the absence of any material, the court was justified in not relying upon those sale instances.

4. In this view of the matter, counsel for the appellant contended that even if the consideration of Rs.2,60,000/- for which the claimant purchased the land should have been taken into consideration and if that is considered the price of the land comes to Rs.17,000/- per acre. The claimant had purchased this land about 8-9 years before the

acquisition and therefore he would be entitled to escalation at 10% per annum on the price of Rs.17,000/-.

5. Secondly, it was contended that there were 66 trees in the acquired land, out of which 51 were fruit bearing, the particulars of trees have been given by him to SLAO, but no compensation was granted or awarded to him in respect of those trees. Thirdly, he contended that there was a house admeasuring 1700 sq. ft. He was awarded a paltry sum of Rs.22,000/- for the trees and Rs.80/- per sq. ft. for the house. This according to him was not at all just and proper compensation and not certainly as per the market value.

6. Regarding the contention of the appellant the compensation for trees and house is not properly given, it appears from the record that when the appellant - claimant filed his reply to the first show cause notice under Section 4 (1) dated 18.1.1990, and in reply dated 16.2.1990 he did not make any claim in respect of the trees. That reply is on the record of the Reference Court and there is no mention as to how many trees were there in the acquired land, which kind of trees were there, and what was their value, what was their yearly yield etc. It appears that seven months thereafter i.e.

on 5.9.1990 the claimant wrote a letter to the SLAO and made claim in respect of compensation in respect of trees, particulars of which were given by him in his application. There were in all 49 trees and he claimed Rs.1,01,200/- for those 49 trees. SLAO in his award, copy of which is there in the record, has considered this aspect and has observed that the claimant - appellant has demanded Rs.1,01,200/- as the compensation for trees, and SLAO has verified about the price of the trees and house from the concerned technical officers. He also observed that the price claimed by the claimant was general price and no particulars were given about the trees and why so much price was claimed. The trial court while awarded Rs.22,000/- as compensation for trees, I therefore do not find anything wrong in the order of the SLAO because the trial court observed that the details with regard to the trees, their annual yield, their age and future life were neither mentioned in the application nor any evidence to that effect was led by the claimant. No witnesses were examined and therefore it was difficult to hold that compensation awarded by SLAO was inadequate. The Reference Court also took both the admission given by the claimant in his cross examination that valuation of the trees situate in the land was made by the Deputy Director of Horticulture. I also find no reason to interfere with this finding and the

claim by the appellant in respect of enhancement of compensation for trees, is required to be rejected. It is true that there were 49 trees but in the absence of particulars, the price fixed by the Deputy Director of Horticulture and awarded by the SLAO, has to be accepted as correct and proper.

7. So far as house is concerned there are two claims of the claimants. Firstly, according to him the compensation awarded of Rs.1,37,443/- was inadequate and the claimant should have been given Rs.2,53,500/- as compensation for the house at the rate of Rs.150/- per sq. ft. and, secondly, it was his contention that he had no alternative house in the village and he had to shift his residence because of the acquisition of his residential house and for that he has claimed Rs.10,000/-.

8. While considering this aspect of the matter, the Reference Court considered evidence of expert examined by the claimant. The court did not accept his evidence because he was not a qualified valuer for civil work. He is not an expert in the field of valuation of building. He was admittedly relative of the claimant and he admitted that for making valuation of the house, details such as area of construction, its basement, its foundation was required to be taken in to consideration. He also

admitted that he was not aware as to when the house was constructed etc. Admittedly, there were no sale instances proved and produced by the claimant in respect of house in that village.

9. Counsel for the appellant however contended that villagers usually do not sell their houses because then there is nothing left for them to reside and therefore sale instances of house in villages are very very rear. He however contended that the claimant has given his evidence and has stated that the house was constructed in stones and was having roof of tiles and the area of the house was 1700 sq. ft. He did not get the price as suggested by him to the SLAO. He also stated that because of the acquisition of the house he could not get any accommodation at Mhaisal and he had to shift his residence to Miraj. He therefore claimed Rs.10,000/- on that count. This claim was also negatived by the Reference court in the absence of evidence or proof.

10. I find considerable force in the submissions of the counsel for the appellant that if the residential house is acquired and if the person aggrieved has no other house in the said village, he is bound to suffer heavy loss and damages or incur expenses for establishing a new residence for him.

Therefore, claim of Rs.10,000/- on this count ought to have been awarded. So far as price of the house is concerned, no material is made available by the claimant about his enhanced claim. Even his evidence, referred to above, is scanty and insufficient. But award of Rs.1,37,443/- for 1700 sq. ft. of house built in stone and having roof tiles does not appear to be proper. Claimant has claimed Rs.2,53,500/-. In my opinion, addition of Rs.50,000/- as compensation for the house, would be proper.

11. Thirdly, and most important count is the price of the land. In this regard as stated by me above, the contention of the appellant is required to be accepted. The claimant has himself purchased the land for Rs.2,60,000/- and the rate comes to Rs.16,000/- or Rs.17,000/- per acre. This sale deed was about 8 years before the acquisition and therefore according to the counsel for the appellant he would be entitled to 10% increase per annum. SLAO has awarded Rs.16,213/- per acre which is approximately the same price for which the claimant has purchased the land but the escalation has not been granted. Therefore, in my opinion, the claimant would be entitled to escalation of price at 10%. In this regard the claimant has stated that gut No.497 and gat No.510 was purchased by him from

Shri Shrimant Ambikarake Shinde in 1980, gat No. 497 was admeasuring 15 acres while gat No.510 was admeasuring 2 acres and 6 gunthas. The State has acquired 90 R out of gat No.497 and 38R from gat No.510.

12. 90 R from gat No.497 were acquired, the land was purchased by claimant in 1980 for Rs.40,000/-, price per acre comes to Rs.15,000/-. The sale deed is of 1980 and the date of notification under Section 4 was 1990. If giving 10% escalation on this basic price of Rs.15,000/- the amount comes to Rs.35,369.22 paise as per the calculations made by the counsel for the claimant and given to me during the arguments, which is taken and placed on record of this appeal as Exhibit 'X'.

13. So far as gat No. 510 is concerned, 38 R was acquired. Claimant purchased it in 1980 for Rs.2,60,000/- i.e. Rs.17,333 per acre and giving 10% escalation comes to Rs.40,870.30 paise per Acre.

14. Therefore, even though the Reference Court did not accept the valuation of the acquired land made by the Deputy Collector, Stamps, for the purpose of stamp duty whatever was paid by the claimant is to be accepted as basic value and he would be entitled to 10% escalation per year.

15. To sum up, the claimant will be entitled for the compensation, as follows.

Rs.35,369.22 per acre as compensation for 38R from Gat No.510.
Rs.40,870.30 paise per acre as compensation for 90R from gat No.497

Rs.10,000/- as compensation for shifting the house; and

Rs.50,000/- additional compensation for the house itself.

In view of the above, the appeal will have therefore to be allowed in the above manner.

16. I therefore pass the following order:

ORDER

. Appeal is allowed.

. Order of dismissal of Reference is set aside and the claimant will be entitled to the following.

Rs.35,369.22 per acre as compensation for 38 R from Gat No.510 = Rs.33,600.75 paise
Rs.40,870.30 paise per acre as compensation for 90 R from gat No.497 =Rs.91,958.17 paise
Rs.10,000/- as compensation for shifting the house;

and

Rs.50,000/- additional compensation for the house itself.

Total : Rs.33,600.75 + Rs.91,958.17

+ Rs.10,000/- + Rs. 50,000/- = Rs.1,85,558.92 paise

In addition to what has been awarded by the SLAO and with solatium and interest on the enhanced amount at the rate of 9% per annum.

25.2.2005 (D.G. DESHPANDE,J.)